

Illinois Administrative Code

TITLE 50: INSURANCE

SUBCHAPTER hh: WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY ACTS

PART 2901: WORKERS' COMPENSATION SELF INSURANCE

Section

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AUTHORITY: Implementing Section 4a of the Workers' Compensation Act (Ill. Rev. Stat. 1991, ch. 48, par. 138.4a) [820 ILCS 305/4a] and Section 187 of the Illinois Insurance Code (Ill. Rev. Stat. 1991, ch. 73, par. 799) [215 ILCS 5/187] and authorized by Section 401 of the Illinois Insurance Code (Ill. Rev. Stat. 1991, ch. 73, par. 1013) [215 ILCS 5/401].

SOURCE: Adopted at 5 Ill. Reg. 6352, effective May 27, 1981; codified 7 Ill. Reg. 3480; amended at 18 Ill. Reg. 12785, effective August 4, 1994.

2901.10 Authority and Purpose

This rule is promulgated by the Director of Insurance pursuant to Section 4a of the Workers' Compensation Act (Ill. Rev. Stat. 1981, ch. 48, par. 138.4a), hereinafter referred to as the Act, which empowers the Director *to make reasonable rules and regulations as may be necessary* for the administration of the Act; and is further authorized by Sections 187 and 401 of the Illinois Insurance Code (Ill. Rev. Stat. 1981, ch. 73, pars. 799 and 1013). The purpose of this rule is to establish standards for the establishment, operation and administration of administrators and service companies authorized by the Act.

2901.20 Definitions

Unless otherwise indicated, the following definitions shall apply to this Rule:

"Assets" shall mean investments as per Section 2901.30(c)(3), cash and reinsurance recoverable from authorized reinsurers on paid losses and amounts due from pool participants not more than 60 days past due.

"Authorized insurer" shall mean an insurer licensed in the State of Illinois to transact Clause (d) of Class 2 of Section 4 of the Illinois Insurance Code (Ill. Rev. Stat. 1981, ch. 73, par. 616).

"Calendar quarter" shall mean the 3-month periods ending March 31, June 30 and September 30.

"Calendar year" shall mean the period from January 1 to December 31.

"Director" shall mean the Director of the Department of Insurance.

"Engaged actively in business" shall mean a bonafide business concern having conducted commerce, trade or industry in the State of Illinois for a specified period of time. Any and all records relating to this requirement shall be open to inspection by the Director or his designee during normal business hours.

"Excess of loss insurance" shall mean insurance purchased from a licensed insurer or reinsurer in which for each claim for each risk, the pool pays the amount of the claim up to a predetermined amount and the insurer or reinsurer pays any amount of the claim in excess of the retained portion. For purpose of this definition, "risk" means the employer members and not the individual employees employed thereby.

"Gross Annual Payroll" shall mean payroll for the preceding calendar year.

"Independent Actuarial Opinion" shall mean an opinion expressed by a member of the American Academy of Actuaries or Casualty Actuarial Society.

"Independent C. P. A." shall mean a Certified Public Accountant or accounting firm registered to practice in Illinois.

"Pool" shall mean the group self-insurers authorized by Section 4a of the Worker's Compensation Act, as amended.

2901.30 Pool Administration

- a) Every application for Certificate of Authority to establish a pool must include the following documentation and information regarding its Administrator, Pooling Agreement, Plan of Operation and membership:
 - 1) Administrators must disclose:

- A) Biographicals of the risk manager on forms prescribed by the Director.
- B) If a corporation, biographicals of all officers and directors.
- C) Size of staff and other information, such as the kinds of staff positions, location of administrative offices and the nature of any electronic data processing equipment, if any, available for servicing the pool, to demonstrate that the Administrator has the resources to administer the self-insured program disclosed pursuant to subsection (a)(3) below.
- D) Most recent financial statement of Administrator. If a publicly held company, a copy of the last 10-K filed with the Securities and Exchange Commission.
- E) Compensation of Administrator.

2) Pooling Agreement must contain:

- A) Services to be provided by Administrator.
- B) How costs are to be porportioned among members.
- C) Initial premium deposit.
- D) Assessment provisions.
- E) Termination provisions and minimum term of membership. The minimum term of membership shall not be less than one year.
- F) Duration of liability for additional assessments following termination of membership shall be for a period of not less than three years.
- G) Deductibles, if any, to be retained by individual members.
- H) Limitations, if any, on risks insured (e.g., employees located outside state).
- I) Prerequisites for membership.

3) Plans of Operation must disclose:

- A) Listing of initial members.
- B) Initial annual rate(s) to be charged members and an explanation of how rate(s) developed.
- C) Anticipated first year premium.
- D) Anticipated first year losses.
- E) Aggregate loss history of initial members for each of the last three years.
- F) The aggregate premium that would have been received at the proposed rate for each of the last three years assuming the losses of subsection (a)(3)(E) above.
- G) Net retention of pool and list of initial insurers.
- H) Names of all entities which will provide services for the pool and copies of proposed contracts in connection therewith.

- I) Safety and loss control programs to be provided or required.
 - J) Plans for expansion of pool and anticipated future membership.
 - 4) Written evidence from a surety company authorized to transact business in this State that the Administrator has or can secure the fidelity bond required by this Rule.
 - 5) Information about initial members on forms prescribed and completed by each individual member.
- b) Standards for Issuing Certificates of Authority to Pools. Upon receipt of a complete application the Department of Insurance shall consider the following in evaluating the financial strength of the Pool:
- 1) Number of employees covered by the Pool.
 - 2) Particular industry(ies) participants are engaged in.
 - 3) Combined net worth of Pool participants.
 - 4) Any excess insurance purchased from authorized insurers.
 - 5) All excess insurance policies shall have a term of not less than one year. No cancellation, termination or alteration of coverage whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of 90 days after written notice of such cancellation, termination, or alteration has been filed with the Director unless an earlier date of such cancellation, termination, or alteration is approved by the Director as unnecessary for the protection of the pool or its members.
 - 6) Combined workers' compensation experience for group for last three years and any other financial data requested by the Director.
 - 7) The gross annual payroll members must be at least \$10 million gross annual payroll.
 - 8) The Pool Administrator must have either contracted with licensed service companies or have sufficient resources, such as those set forth in subsection (a)(1)(C) of this Section, to administer the proposed pool.
- c) General Rules:
- 1) Every group self-insurer shall, at all times, maintain reserves which are sufficient to provide for the payment of all losses and claims incurred discounted in an amount not to exceed 5% per annum whether reported or unreported, which are unpaid and for which such group self-insurer may be liable, and to provide for the expense of adjustment or settlement of such losses and claims.
 - 2) Administrator's Bond

- A) All Administrators shall procure and maintain in force surety bonds on employees, officers or positions in an amount not less than the amount set forth in the column "Minimum Amount of Bond," based on the amount of assets held by the Administrator (as determined from year to year hereafter) stated in the annual statement of such Administrators as filed with the Department. All such bonds shall be written with at least a one year discovery period and if written with less than a three year discovery period shall contain a provision that no cancellation or termination of the bond, whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of 90 days after written notice of such cancellation or termination has been filed with the Department unless an earlier date of such cancellation or termination is approved by the Department.
- B) Such bonds shall include all employees, officers or positions for the following perils which may be covered under separate policies:
- i) Dishonesty of employees and officers;
 - ii) Robbery, burglary, larceny, theft, false pretense, hold-up, misplacement, mysterious disappearance, and damage or destruction while property is in any bank or any recognized place of safe deposit, or in transit;
 - iii) Forgery or alteration.
- C) The bond shall be written by an insurer licensed to transact business in the State of Illinois.
- D) Schedule of Assets in relationship to Amount of Bond

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MINIMUM AMOUNT OF BOND

- 3) For the purpose of determining compliance with subsection (c)(1) above and Section 4a(2) of the Workers' Compensation Act (Ill. Rev. Stat. 1991, ch. 48, par. 138.4a(2)) [820 ILCS 305/4a(2)], only assets invested in the following manner will be recognized.
- A) Direct obligations of the United States of America for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the United States of America.
 - B) Direct obligations for the payment of money issued by an agency or instrumentality of the United States of America, or obligations for the payment of money which are guaranteed as to payment and principal and interest by an agency or instrumentality of the United States of America.
 - C) Any bonds or securities which are issued by any state of the United States and which are secured by the full faith and credit of that state.
 - D) Certificates of deposit, time deposits, or demand deposits in a bank in the State of Illinois which has deposits insured by the Federal Deposit Insurance Corporation.
 - E) Saving certificates issued by any savings and loan association in the State of Illinois which has deposits insured by the Federal Savings and Loan Insurance Corporation.
 - F) Direct, unconditional obligations of a solvent business corporation for the payment of money on the following conditions:
 - i) The corporation shall be incorporated under the laws of the United States of America or any state of the United States of America;
 - ii) The corporation shall have a tangible net worth of not less than \$500,000 and the obligations must be awarded a "1" or "2" rating by the Securities Valuation Office of the National Association of Insurance Commissioners;
 - iii) The corporation may not be affiliated with any member of the Pool;
 - iv) No such obligation of the corporation has been in default as to principal or interest during the five years preceding the date of investment, but the corporation

need not have had obligations outstanding during that period and need not have been in existence for that period, and obligations acquired under this Section may be newly issued;

- v) A Pool shall not invest more than 33 1/3% of its assets under this Section; and
- vi) A Pool shall not invest under this Section more than 5% of its assets in the obligations of any one such corporation.

G) Obligations of any political subdivision of any state of the United States of America for the payment of money, on the following conditions:

- i) The obligations are payable from ad valorem taxes;
- ii) Such political subdivision is not in default in the payment of principal or interest on any of its direct, general obligations;
- iii) No investment shall be made under this Section in obligations which are secured only by special assessments for local improvements;
- iv) A Pool shall not invest under this Section more than 4% of its assets in direct, general obligations issued by any one such political subdivision; and
- v) The Pool shall not invest more than 50% of its assets under this Section.

H) Mutual Funds

- i) Government money market mutual funds that meet the conditions of paragraphs (c)(2), (c)(3) and (c)(4) of 17 C.F.R. 270.2a-7, revised as of April 1, 1992, that have been rated in one of the two highest rating categories by an independent rating agency recognized by the National Association of Insurance Commissioners and that invests in obligations issued, guaranteed or insured by the United States or Canada or any agency or instrumentality of the United States or Canada.
- ii) Fixed income bond mutual funds that meet the conditions of paragraphs (c)(2), (c)(3) and (c)(4) of 17 C.F.R. 270.2a-7 revised as of April 1, 1992, and that have been rated in one of the two highest rating categories by an independent rating agency recognized by the National Association of Insurance Commissioners. A pool shall not invest in fixed

income bond mutual funds more than the greater of \$100,000 or 10% of its total assets in any one fund.

- 4) Amounts recoverable from authorized reinsurers on unpaid losses may be deducted from the reserves required by subsection (b)(1) of this Section and Section 4 of the Workers' Compensation Act (Ill. Rev. Stat. 1991, ch. 48, par. 138.4) [820 ILCS 305/4].
- 5) All securities eligible for registration shall be registered in the name of the Pool and all securities shall be maintained in a State or National Bank having trust powers and located within this State.
- 6) Each Pool shall, by April 1 of each year, file with the Director a financial statement on a form to be prescribed by him setting forth the Pool's assets, liabilities and surplus funds for preceding calendar year. Furthermore, the Director may require quarterly supplementary summary statements to be filed not less than 60 days following the end of each calendar quarter.
- 7) Each Pool shall, on or before June 1 of each year,
 - A) file with the Director an audited financial statement reporting the financial condition of the Pool as of the end of the most recent calendar year and changes in the surplus funds for the year then ending.
 - B) The annual audited financial report shall include the following:
 - i) Report of an independent certified public accountant.
 - ii) Balance sheet reporting assets as defined by this Part, liabilities and surplus funds.
 - iii) Statement of gain or loss from operations.
 - iv) Statement of changes in financial position.
 - v) Statement of changes in surplus funds.
 - vi) Notes to financial statements.
- 8) The Director may require a Pool to file an independent actuarial opinion as to the sufficiency of the loss and loss adjustment expense reserves established pursuant to this Part.
- 9) The Pool shall purchase excess of loss insurance of an amount not greater than 20% of the projected annual premiums to be received from members at the then current rate. The maximum required limit of excess of loss insurance shall be determined by the Director. In making this determination, the Director shall consider

all aspects of the Pool and its insureds including, but not limited to, concentration of insured employees, Pool retention, Pool size, and surplus funds. Additionally, the Pool may purchase annual aggregate excess insurance providing coverage of not less than 90% excess of not more than 110% of the projected annual premiums to be received by the Pool at the then current rate with a minimum limit of \$2 million excess of the Pool's retention. In considering the adequacy of the annual aggregate excess insurance cover, the Director shall consider all aspects of the Pool and its insureds including, but not limited to, concentration of insured employees, Pool retention, Pool size, and surplus funds.

- 10) Pool Administrators and books and records relating to the operations of the Pool shall be located within the State of Illinois and shall be available for inspection by the Director or his designee during normal business hours.

d) Assessment Provisions

- 1) Whenever the Director determines by means of audit, annual certified financial statement, actuarial opinion, or otherwise, that the assets possessed by a Pool are less than the reserves required by this Part together with any other unpaid liabilities, he shall then order the Pool Administrator to assess the individual Pool participants in an amount not less than necessary to correct the deficiency. This subsection is not intended to restrict or preclude the Administrator from time to time levying assessments or increasing premium deposits in accordance with the pooling agreement.
- 2) In the event of the inability of individual Pool participants, by reason of insolvency or otherwise, to pay assessments required by subsection(d)(1) above, the Director shall levy upon and collect from all group self-insurers an assessment to assure prompt payment of such unpaid compensation and medical services.
- 3) Liability for assessments will be joint and several.

e) Dissolution

Liquidation, conservation and dissolution of self-insurance Pools will be conducted pursuant to Article XIII of the Illinois Insurance Code (Ill. Rev. Stat. 1991, ch. 73, par. 799 et seq.) [215 ILCS 5/Art. XIII].

(Source: Amended at 18 Ill. Reg. 12785, effective August 4, 1994)

2901.40 Provisions Applicable to Members of Group Self-Insurance Pools

- a) All members of a self-insurance Pool must have similar risk characteristics.
- b) In determining whether members exhibit similar risk characteristics, the Director shall consider any or all of the following factors:
 - 1) Loss frequency inherent in the occupational framework of group members.
 - 2) Loss severity inherent in the occupational framework of group members.
 - 3) Occupational disease potential inherent in the occupational framework of group members.
 - 4) Occupational tasks of member employees.
 - 5) Any other relevant fact the group members present to the Director that has reference to the classification of similar risks.
- c) Within five days after an employer becomes a member of an existing pool, the pool administrator shall notify the Director and provide the following information:
 - 1) Name.
 - 2) Address.
 - 3) Number of employees.
 - 4) Gross annual payroll.
 - 5) Nature of employers business.
- d) Eligibility as a pool participant shall be based upon having a minimum of:
 - 1) 20 employees and \$250,000 gross annual payroll; or
 - 2) Ten employees and \$125,000 gross annual payroll for participants who have engaged actively in business for a minimum period of three years in Illinois; or
 - 3) Five employees and \$62,500 gross annual payroll for participants who have engaged actively in business for a minimum period of five years in Illinois.
- e) Exceptions to the minimum eligibility requirements of Section 2901.40(d) of this rule may be allowed by any pool whenever the following conditions are met:
 - 1) The participant has been actively engaged in business for a minimum period of five consecutive years in Illinois; and

- 2) The participant agrees to make all its financial records available to the Director of Insurance for reasonable inspection during the period of his membership; and
- 3) The Pool Administrator certifies to the Director that he examined the financial records of the pool participant prior to the participant's admission to the pool and found the participant to be solvent and financially stable.

2901.50 Service Companies

- a) Any person or entity desiring to be licensed as a service company shall apply to the Director on forms available from the Director. The license shall designate areas of administrative services which the service company shall be authorized to perform. Any license granted shall be effective for two years unless revoked or suspended by order of the Director on the grounds that the licensee does not have the organization, or financial integrity necessary to supply the service for which the license was issued.
- b) In support of the application, a service company shall submit:
 - 1) Summary information concerning its organization and staff.
 - 2) Detailed resumes of all employees, or employees of any subcontractor, with administrative or professional capacity. Such resumes shall indicate the areas of administration in which each employee shall work and the qualifications and experience of the employee relating to that area.
 - 3) A description of the administrative services intended to be provided.
 - 4) The identity of the owners of the service company, including but not limited to, all members of a partnership and all officers of a corporation.
- c) If the service company intends to provide claims adjusting, the service company shall have supervisory personnel who possess at least three years' experience adjusting workers' compensation claims in Illinois.
- d) The service company shall have within the State of Illinois an employee who is able to act as a resident agent, authorized to act in all matters concerning the service company.
- e) Any records of a service company relating to any of the services offered or provided to any self-insurer shall be open to inspection by the Director or designee during normal business hours.
- f) Whenever the Director finds that a licensed service company has committed:

- A) Improper claims handling techniques;
 - B) Violation of any of the foregoing rules or insurance laws of this State;
 - C) Violation of any provision of the Workers' Compensation Act;
 - D) An unfair or deceptive act or practice as defined in Section 154.6 of the Illinois Insurance Code.
- 2) He shall issue an Order of revocation or suspension to the service company in question effective 30 days from the date of service. If the service company requests a hearing the Order shall be stayed pending a resolution of the matter by hearing conducted pursuant to Administrative Hearing Procedures (50 Ill. Adm. Code 2402) and Sections 402 and 403 of the Illinois Insurance Code.
- g) Each service company shall report to the Director the termination of any service contract entered into with a self-insurer within ten (10) days of such termination.